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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 350

IN THE MATTER OF
WISCONSIN CO-OPERATIVE MILK POOL,
Alleged Bankrupt.

WISCONSIN CO-OPERATIVE MILK POOL,
Petitioner,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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For the Petitioner.

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THE DUNLOP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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Petition.

Wisconsin Co-operative Milk Pool, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above entitled cause on May 7, 1941. (R. 151.)

Statement of Matter Involved.

The Wisconsin Co-operative Milk Pool, petitioner, hereafter called the "Pool", was organized under Chapter 185, Wisconsin Statutes, as a nonstock, nonprofit co-operative association. (R. 42.) Membership consisted entirely of persons actively engaged in farming. (R. 44.) Farmers became members by executing a membership contract. (R. 26, 75.) The Pool performed its chief function as marketing agent (R. 76) for its member and nonmember patrons in the sale of their dairy products, mostly cheese. (R. 34.) Remittance was made to member and nonmember patrons only after sale. (R. 16, 28, 30.) In all economic respects, member and nonmember patrons had identical rights. (R. 39.) Under Chapter 185, Wisconsin Statutes, the proceeds of sale, less only operating expenses and cost of goods sold, were required to be remitted. (R. 146.) Various devices, such as a check-off and service charge, were used to prorate operating expenses on the basis of production volume. (R. 29, 38, 41, 75.) Funds raised for this purpose were never sufficient to meet operating expenses and remove the deficit. (R. 58, 111, 115, 119.) Had there ever been a balance, it would have reverted to the contributors as required by statute. (R. 39, 41.)

On August 30, 1940, respondents filed a petition in the Federal District Court for the Eastern District of Wisconsin in which they alleged that the Pool had committed an act of bankruptcy in making a general assignment for the benefit of its creditors and that it was a business corporation. The prayer of the petition was that the Pool be adjudged an involuntary bankrupt. (R. 2-3.)

The Pool answered denying its amendability to involuntary adjudication. (R. 5-7.) The issue so joined was tried and the District Court dismissed the petition. (R. 122-127.) Upon respondents' appeal the United States Circuit Court of Appeals for the Seventh Circuit reversed the lower court.

BASIS OF JURISDICTION TO REVIEW.

Opinions Below.

The opinion of the District Court (R. 122-127) is reported in 35 Fed. Supp. 878. The opinion of the Circuit Court of Appeals (R. 145-150) is reported in 119 F. (2d) 999.

Jurisdiction.

The date of the judgment which the Court is requested to review is May 7, 1941. (R. 151.)

The petition herein was presented on or before August 7, 1941.

Review is requested under the following provisions of the Bankruptcy Act:

> "SECTION 24. (c) The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Court of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted."
>
> 11 U. S. C. A., Sec. 47 (c).

This matter, therefore, falls within the scope of Section 240 (a) of the Judicial Code, 28 U. S. C. A., Sec. 347 (a), under which jurisdiction is invoked.

Question Presented.

Is petitioner a "moneyed, business or commercial corporation" subject to involuntary adjudication under the following provisions of Section 4 (b) of the Bankruptcy Act?

> "SECTION 4. *Who may become bankrupts.* b. Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000.00 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this Act. The bankruptcy of a corporation shall not release its officers, the members of its board of directors or trustees or of other similar controlling bodies, or its stockholders or members, as such, from any liability under the laws of a State or of the United States. The status of an alleged bankrupt as a wage earner or farmer shall be determined as of the time of the commission of the act of bankruptcy."
>
> 11 U. S. C. A., Sec. 22 (b).

Reasons for Granting Writ.

First, an important question of federal law is presented which has not been, but should be, settled by this Court.

This case involves the application of the Federal Bankruptcy Act to agricultural co-operative marketing associations. The agricultural co-operative marketing movement is nationwide. All of the forty-eight states and the District of Columbia have statutes pertaining to co-operatives. Both state and federal governments have declared a public interest in their development and have encouraged them.

Thus the question presented here is one of federal law and is national in scope.

> *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-operative Marketing Ass'n*, 276 U. S. 71, 92, 96 (1928).

Congress itself has considered unrestricted corporate susceptibility to involuntary adjudication undesirable. It has recognized the necessity for protecting certain types of corporations which are uniquely or especially important in the economic structure of the nation from the harshly destructive effect of ordinary involuntary bankruptcy. It has done so by specifically exempting such corporations under Section 4 (b) of the Bankruptcy Act.

Nonmoneyed, nonbusiness or noncommercial corporations in general are also exempt. Presumably Congress intended this rather broad exemption to serve purposes of protection similar to those of the specific exemptions.

Corporations like petitioner are organized as nonprofit associations under enabling acts designed to promote the public interest. It is important to determine finally whether they fall within the general exemption and are to be protected from the destructive effect of involuntary bankruptcy.

Until the question is finally settled, the recurrence of litigation is made extremely likely by the extent of the co-operative movement and the complexity of its financing problems.

Second, the decision of the Circuit Court of Appeals is probably in conflict with applicable local laws and decisions.

The decision of the Circuit Court of Appeals seeks to place upon co-operative marketing associations a characterization abjured by the law of their creation. The concept of a direct or indirect profit to the co-operative as a corporate entity lurks everywhere in the reasoning by

which the Court reaches the conclusion that the co-operative is a business corporation; yet the co-operative was organized and operated under a law defining it as a non-profit association.

Sec. 185.01, Wis. Stats. (1939) (quoted, Brief 15).

Third, the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court.

The Circuit Court of Appeals held that the question presented involved no problem of public policy. (R. 149.) It is submitted that this is probably in conflict with the reasonable implications of the decision in *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-operative Marketing Ass'n*, 276 U. S. 71 (1928).

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

Dated: August 3, 1941.

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For the Petitioner.

KENNETH M. ORCHARD and
WILLIAM H. RILEY,
Of Madison, Wisconsin,
Of Counsel.